

FORM TO BE USED BY PRISONERS IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

AUG 29 2014

DIVISION

JAMES W. McCORMACK, CLERK

By: JB

DLP CLERK

CASE NO. 1:14-CV-107-JM-JSV

I. Parties

In item A below, place your full name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.

A. Name of plaintiff: Wilbert Lezell Johnson
ADC # 84494

Address: Grimes Unit, 300 Corrections Dr., Newport, AR 72112

Name of plaintiff: _____
ADC # _____

Address: _____ This case assigned to District Judge Moody
and to Magistrate Judge Volpe

Name of plaintiff: _____
ADC # _____

Address: _____

In item B below, place the full name of the defendant in the first blank, his official position in the second blank, his place of employment in the third blank, and his address in the fourth blank.

B. Name of defendant: Hubbard

Position: Correctional Officer

Place of employment: Arkansas Department of Correction

Address: Grimes Unit, 300 Corrections Dr., Newport, AR 72112

Name of defendant: James Russell

Position: Correctional Officer

Place of employment: Arkansas Department of Correction

Address: Grimes Unit, 300 Corrections Dr., Newport, AR 72112

Name of defendant: Gay

Position: Corporal

Place of employment: Arkansas Department of Correction

Address: Grimes Unit, 300 Corrections Dr., Newport, AR 72112

Name of defendant: Lee

Position: Lieutenant

Place of employment: Arkansas Department of Correction

Address: Grimes Unit, 300 Corrections Dr., Newport, AR 72112

II. Are you suing the defendants in:

- ☐ official capacity only
☐ personal capacity only
☒ both official and personal capacity

III. Previous lawsuits

A Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ___ No ☒

B. If your answer to A is yes, describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

☐ Parties to the previous lawsuit:

Plaintiffs: _____

Defendants: _____

☐ Court (if federal court, name the district; if state court, name the county):

- ☐ Docket Number: _____
- ☐ Name of judge to whom case was assigned: _____
- ☐ Disposition: (for example: Was the case dismissed? Was it appealed? Is it still pending?) _____
- ☐ Approximate date of filing lawsuit: _____
- ☐ Approximate date of disposition: _____

IV. Place of present confinement: Arkansas Department of Correction
Grimes Unit, 300 Corrections Dr., Newport, AR 72112

V. At the time of the alleged incident(s), were you:
(check appropriate blank)

_____ in jail and still awaiting trial on pending criminal charges

_____ serving a sentence as a result of a judgment of conviction

_____ in jail for other reasons (e.g., alleged probation violation, etc.)
explain: _____

VI. There is a prisoner grievance procedure in the Arkansas Department of Corrections. Failure to complete the grievance procedure may affect your case in federal court.

A. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

Yes _____ No _____

B. If your answer is YES, attach copies evidencing completion of the final step of the grievance appeal procedure. FAILURE TO ATTACH THE REQUIRED COPIES MAY RESULT IN THE DISMISSAL OF YOUR COMPLAINT.

C. If your answer is NO, explain why not: _____

Name of defendant: Vernon Robertson

Position: Chief of Security Officer, Major

Place of employment: Grimes Unit, Arkansas Department of Correction

Address: 300 Corrections Drive, Newport, AR 72112

Name: ~~Robert~~ Riley

Position: Captain

Place of employment: Grimes Unit, Arkansas Department of Correction

Address: 300 Corrections Drive, Newport, 72112

Name of defendant: Lawson

Position: Correctional Officer

Place of employment: Grimes Unit, Arkansas Department of Correction

Address: 300 Corrections Drive, Newport, AR 72112

Name of defendant: Justice Minor, ~~Minor~~

Position: Disciplinary Hearing Officer

Place of employment: Arkansas Department of Correction

Address: P.O. Box 8707, Pine Bluff, AR 71611

Name of defendant: A. Weekly

Position: Warden

Place of employment: Grimes Unit, Arkansas Department of Correction

Address: 300 Corrections Drive, Newport, AR 72112

Name of defendant: Raymond Naylor

Position: Disciplinary Hearing Administrator

Place of employment: Arkansas Department of Correction

Address: P.O. Box 8707, Pine Bluff, AR 71611

Name of defendant: Ray Hobbs.

Position: Director

Place of employment: Arkansas Department of Correction

Address: P.O. Box 8707, Pine Bluff, AR 71611



Arkansas Department of Correction

Director's Office
P.O. Box 8707
Pine Bluff, Arkansas 71611-8707
Phone: (870) 267-6200
Fax: (870) 267-6244
www.arkansas.gov/doc

MEMORANDUM

TO: Inmate W. Johnson, ADC #084494
Grimes Unit

From: Ray Hobbs, Director

Date: July 24, 2014

RE: Disciplinary Appeal

I am in receipt of your disciplinary appeal regarding a major disciplinary you received on 05/18/2014, at 3:45 a.m., by CO I J. Russell.

After reviewing your appeal, I find no due process violations that would warrant modification or reversal of the disciplinary hearing officer's decision. You were insolent to staff. Therefore, I find no evidence to support modification or reversal of this disciplinary.

Your appeal is denied.

RH/cv

cc: Warden/Inmate File
Hearing Officer Administrator
File

VII. Statement of claim

State here (as briefly as possible) the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

I, Wilbert L. Johnson, after first being duly sworn, do hereby swear depose and state that: (1) On May 18, 2014, at approximately 3:15 AM, Ofc. Hubbard, Ofc. Russell, and Cpl. Gay was working housing 4 during diabetic treatment call. Prior to being let out the barracks to report to the pill window for routine blood sugar check and to take my medication, I was directed to wait until the regular pill call hours to receive my prescriptions. I complied with officer's order and waited as I was directed.

(2) Thereupon, the door being open to let barracks 22 out for pill call, my constitutional right to be protected from misuse of force under the cruel and unusual punishment clause of the 8th Amendment was violated. For some unknown reason, Ofc. Russell went on a rampage and struck me in the chest and stated that I could not go to pill call.

(3) I complied with Ofc. Russell's order and requested that I be provided with a grievance to file a complaint against him for harassing me. In my endeavor to obtain a grievance to report this matter resulted in retaliation. Ofc. Russell told me that he was going to file disciplinary charges against me and make sure that I be punished for making allegations to file a complaint against him. This resulted in a direct violation of my constitutional right of access to the courts and

due process of law guaranteed by the 1st and 14th Amendment to the U.S. Constitution. Ofc. Hubbard and Cpl. Gay was on the other end of the building and was not present to witness this matter.

(4) Lt. Lee responded to this matter and I was told to step outside the barracks for questioning. I advised Lt. Lee about Ofc. Russell's misuse of force and that he threaten to file disciplinary charges against me for making allegations to file a complaint against him for harassing me. Without any further questions about this matter, Lt. Lee and Ofc. Russell told me to step back into the barracks.

(5) Approximately ten to fifteen minutes later, Lt. Lee and Cpl. Gay who later responded to this matter told me to exit the barracks at which time I was directed to the medical entrance. Thereupon, arriving at the medical entrance, my constitutional right to be protected from misuse of force under the cruel and unusual punishment clause of the 8th Amendment was violated. Lt. Lee and Cpl. Gay threaten to make me if I didn't lay on the floor to be shackled. Upon being shackled I was escorted into medical to be seen by medical personnel, Mr. Boltz. After being medically cleared, I was escorted to the disciplinary segregation unit by Ofc. Gay and Sgt. Baker. I posed no harm or threat to security to warrant in the actions that has been imposed upon me. (See video footage retained by the defendant's).

(6) With deliberate indifference to my constitutional right to be protected from misuse of force under the cruel and unusual punishment clause of the 8th Amendment was violated. Ofc. Hubbard witness the event where Lt. Lee and Cpl. Gay threaten to make me if I didn't lay on the floor to be shackled but refused to intervene to stop the violation.

(7) Instead of Ofc. Russell admitting to his misuse of force against me, it was alleged that I assaulted Ofc. Russell. Ofc. Russell fabricated the truth of the matter and stated that I forced the door open and ran into him in an

attempt to leave the barracks and that I refused to obey an order to step back into the barracks and became insolence.

(8) On May 18, 2014, Cpt. Riley met with me during my pre-hearing confinement and stated that he reviewed the video footage and that it was inconsistent. It did not show that I forced the door open and ran into Ofc. Russell in an attempt to leave the barracks and neither did it show that I refused to obey an order to step back into the barracks or became insolence. My constitutional right under the due process Clause of the 14th Amendment was violated. For some unknown reason Cpt. Riley refused to address this matter and left the disciplinary report as is. The disciplinary report was referred to the disciplinary officer per Major Robertson, C.S.O.

(9) On May 18, 2014, during the initial fact finding process with Major Robertson, my constitutional right under the due process Clause of the 14th Amendment was violated. Major Robertson refused to adhere to the inaccuracy in the disciplinary report and left the disciplinary report as is.

(10) On May 19, 2014, a copy of the disciplinary report dated May 18, 2014, written by Ofc. Russell was served upon me by Ofc. Lawson. I was charged with the following rule violations: 05-7 Assault - Any willful attempt or threat(s) to inflict injury upon staff, 11-1 Insolence to a staff member, 11-2 Using abusive/obscene language to a staff member, and 12-1 Failure to obey orders of staff. I requested the video footage and the witness as listed on the disciplinary report to be called as a witness on my behalf.

(11) My constitutional right for disclosure of the video footage under the due process Clause of the 14th Amendment was violated. Lawson refused to list the video footage as a witness on my behalf and stated that I am not entitled to that right.

(12) On May 28, 2014, I appeared before Ms. Justine Minor, Disciplinary

Hearing Officer for a hearing on the disciplinary report filed against me by Ofc. Russell. I plead not guilty to the disciplinary report and requested that the charges be dismissed due to a lack of evidence. I also requested that the video footage be disclosed and introduced as evidence on my behalf.

(13) On grounds for dismissal of the charges, I stated that I did not force the door open and run into Ofc. Russell in an attempt to leave the barracks and neither did I refused to obey an order to step back into the barracks or become insolence. I also stated that the video footage was reviewed by Cpt. Rittay earlier in the case and that it was inconsistent to the accusations rendered against me in the disciplinary report.

(14) Upon review of the evidence, I was not allowed to hear. Ms. Minor turned off the recorder and denied my request for disclosure of the video footage without a significant reason for doing so. Ms. Minor's failure to review the video footage to exculpate me deprived me of my constitutional right to a fair hearing and due process of law guaranteed by the 1st, 4th, 5th, 8th, and 14th Amendment to the U.S. Constitution.

(15) Upon conclusion of the evidence, Ms. Minor rendered a verdict of guilty on all charges except rule violation 11-2 using abusive/obscene language to a staff member. The decisions that has been imposed upon me in this matter was extremely prejudice. The accusation rendered against me in the disciplinary report was fabricated and should not be used against me. The standards of due process and of evidence are so low in prison disciplinary proceedings, where a prisoner can be found guilty on nothing more than an officer's written report.

(16) During the penalty phase of the hearing, I was deprived of my constitutional right to liberty interests and due process of law guaranteed by the 8th and 14th Amendment. I was reduced to class IV and sentenced to thirty

(30) days punitive isolation with the loss of (365) days good time and sentenced to a term of sixty (60) days commissary, phone, and visitation restriction. This has caused a great impact on my incarceration, state of emotions, and well-being and is causing me to suffer dearly. It is always foreseeable that filing a disciplinary report will result in discipline after a hearing even if the report is fabricated.

(17) On or about May 29, 2014, I appealed my conviction and punishment to Warden Weekly explaining why my conviction and punishment should be reversed or modified. In Warden Weekly's response to my appeal, my constitutional right under the due process clause of the 14th Amendment was violated. Warden Weekly refused to provide me with a definite answer to my appeal and concurred with the decisions of the hearing officer. Warden Weekly fabricated the truth of the matter and stated in her response that she reviewed the video footage and it was inconclusive.

(18) On or about June 9, 2014, I appealed my conviction and punishment to Mr. Raymond Naylor, Disciplinary Hearing Administrator. In Mr. Naylor's response to my appeal, my constitutional right under the due process clause of the 14th Amendment was violated. Mr. Naylor refused to address the merits of my appeal and concurred with the decisions of the hearing officer.

(19) On or about July 15, 2014, I appealed my conviction and punishment to Mr. Ray Hobbs, Director. Mr. Grant Harris, Assistant Director responded to my appeal on behalf of Mr. Hobbs. In Mr. Harris's response to my appeal, my constitutional right under the due process clause of the 14th Amendment was violated. Mr. Harris refused to address the merits of my appeal and concurred with the decisions of the hearing officer. Mr. Harris stated in his response that I was insolent to a staff. For some unknown reason, Mr. Harris refused to address the other parts to my appeal by reversing or modifying my conviction.

- Conclusion -

VIII. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments.
Cite no cases or statutes.

Order a jury trial for this action, appoint Counsel to represent
me, order that disciplinary conviction is expunged from my
record, and order that I am compensated by each defendant jointly
for punitive damages and emotional distress.

I declare under penalty of perjury (18 U.S.C. § 1621) that the foregoing is true and correct.

Executed on this 26 day of August, 20 14.

Wilbert L. Johnson

Signature(s) of plaintiff(s)

- Verification -

I, Wilbert L. Johnson, the plaintiff herein, and in support of my complaint, after first being duly sworn, do hereby swear that the statements, matters and things contained in my complaint herein are true and accurate account to the best of my knowledge, information, and belief and for the purposes therein stated.

Signature: Wilbert L. Johnson, 84494

State of Arkansas

County of

Subscribed and sworn before me on this 27th day of August, 2014

Notary Public: Richard Fry

My Commission Exp: 3-5-22

